

# **ATTACHMENT 5**

## **AT&T Illinois Testimony of McPhee**

**BEFORE THE ILLINOIS COMMERCE COMMISSION**

**Docket No. 12-0550**

**Direct Testimony of J. Scott McPhee  
On Behalf of AT&T Illinois**

**AT&T Illinois Exhibit 4.0**

**December 5, 2012**

**ISSUES  
33 and 43**

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**DIRECT TESTIMONY OF J. SCOTT MCPHEE**

**ON BEHALF OF AT&T ILLINOIS**

**I. INTRODUCTION**

**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is J. Scott McPhee. My business address is 2600 Camino Ramon, San Ramon, California, 94583.

**Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

A. I am an Associate Director – Wholesale Regulatory Policy & Support for Pacific Bell Telephone Company d/b/a AT&T California. I work on behalf of the AT&T incumbent local exchange carriers (“ILECs”) throughout AT&T’s 22-state ILEC territory. I am responsible for providing regulatory and witness support relative to various wholesale products and pricing, supporting negotiations of local interconnection agreements (“ICAs”) with Competing Local Exchange Carriers (“CLECs”) and Commercial Mobile Radio Service (“CMRS”) providers, participating in state commission and judicial proceedings, and guiding compliance with the federal Telecommunications Act of 1996 (“1996 Act” or “Act”) and its implementing rules.

**Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.**

A. I received my Bachelor of Arts degree with a double major in Economics and Political Science from the University of California at Davis. I began my employment with SBC Communications Inc. in 2000 in the Wholesale Marketing – Industry Markets

organization as Product Manager for Reciprocal Compensation throughout SBC's legacy 13-state region. My responsibilities included identifying policy and product issues to assist negotiators and witnesses for SBC's reciprocal compensation and interconnection arrangements, as well as SBC's transit traffic offering. In June of 2003, I moved into my current role as an Associate Director in the Wholesale Marketing Product Regulatory organization. In this position, my responsibilities include helping define AT&T's positions on certain issues for Wholesale Marketing, and ensuring that those positions are consistently articulated in proceedings before state commissions.

**Q. HAVE YOU PREVIOUSLY TESTIFIED IN ANY REGULATORY PROCEEDINGS?**

A. Yes. I have filed testimony and/or appeared in regulatory proceedings in many of the states where AT&T ILECs provide local service, including Illinois.

**Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

A. Illinois Bell Telephone Company, d/b/a AT&T Illinois, which I will refer to as AT&T Illinois.

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

A. I will discuss two open issues concerning transit traffic service – the appropriate rate for AT&T Illinois to charge Sprint for that service (Issue 43) and appropriate indemnification language relating to transit traffic (Issue 33).

53 **Q. WHAT IS TRANSIT TRAFFIC SERVICE?**

54  
55 A. I explain below what transit traffic is. Generally, though, transit is a service that AT&T  
56 Illinois provides to other carriers. Though AT&T Illinois does not believe that transit  
57 service is an obligation under the 1996 Act – and this Commission has agreed with  
58 AT&T Illinois on that point – AT&T Illinois has agreed to include terms for transit  
59 service in the parties' ICA. AT&T Illinois has tariffed pricing for this service based upon  
60 cost studies approved by this Commission, and other carriers in Illinois to which AT&T  
61 Illinois provides transit service pay the tariffed rate under their ICAs. Sprint should do so  
62 as well, and should also indemnify AT&T Illinois for certain losses AT&T Illinois may  
63 incur under circumstances I describe below.

64  
65 **II. DISCUSSION OF ISSUES**

66 **ISSUE 43: What is the appropriate rate that a Transit Service Provider**  
67 **should charge for Transit Traffic Service? (AT&T Pricing Sheets)**  
68

69 **Q. WHAT IS TRANSIT TRAFFIC?**

70  
71 A. Transit traffic is telecommunications traffic that originates on one carrier's network,  
72 passes through an intermediate network (AT&T Illinois' in this instance), and terminates  
73 on a third carrier's network. The intermediate carrier is said to be providing "transit  
74 service." Thus, AT&T Illinois provides transit service when an originating carrier  
75 delivers traffic to AT&T Illinois to be passed through AT&T Illinois' tandem switch and  
76 on to a terminating carrier. Traffic that AT&T Illinois transits does not originate or  
77 terminate with AT&T Illinois end users. Indeed, it does not involve AT&T Illinois end  
78 users at all.

79

80 **Q. DOES TRANSIT TRAFFIC INCLUDE LONG DISTANCE TRAFFIC, SUCH AS**  
81 **A CALL THAT ORIGINATES WITH SPRINT AND THAT AN**  
82 **INTEREXCHANGE CARRIER (“IXC”) HANDS OFF TO AT&T ILLINOIS FOR**  
83 **DELIVERY TO A CLEC THAT TERMINATES THE CALL TO ITS END USER**  
84 **CUSTOMER?**

85

86 A. No. The transit traffic that is the subject of this issue includes only traffic that would be  
87 considered “local” traffic, *i.e.*, traffic for which the originating carrier would pay the  
88 terminating carrier reciprocal compensation, with no IXC or access charges involved.

89

90 **Q. DOES ANYTHING IN THE 1996 ACT EXPLICITLY REQUIRE TRANSITING?**

91

92 A. No. There is no reference to “transit” or “transiting” in the 1996 Act.

93

94 **Q. HAS THE FCC EVER RULED THAT SECTION 251(c)(2), OR ANYTHING ELSE**  
95 **IN THE 1996 ACT, IMPLICITLY REQUIRES TRANSITING?**

96

97 A. No, the FCC has never suggested such a thing. On the contrary, the FCC has repeatedly  
98 noted that nothing in the 1996 Act or in the FCC’s rules or orders requires it to treat  
99 transiting as part of interconnection under section 251(c)(2).<sup>1</sup>

100

101 **Q. HAS THE FCC EVER ADDRESSED THE MATTER IN AN ARBITRATION?**

102

103 A. Yes. The FCC’s Wireline Competition Bureau was called upon to decide whether section  
104 251(c)(2) requires transit service in an arbitration where the Bureau stood “in the shoes”

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<sup>1</sup> *E.g., Application of Qwest Commc’ns Int’l, Inc.*, 18 FCC Rcd. 7325, n.305 (2003) (“we find no clear Commission precedent or rules declaring such a duty” to provide transiting under section 251(c)(2)); *Application of BellSouth Corp.*, 17 FCC Rcd. 25828, ¶ 155 (2002) (same); *Joint Application by BellSouth Corp., et al.*, 17 FCC Rcd. 17595, n.849 (2002) (same).

of a state commission.<sup>2</sup> The Bureau, recognizing the FCC's repeated statements that there is no "clear Commission precedent or rules declaring such a duty," and noting that it was acting "on delegated authority" as a state commission, declined "to determine for the first time" that transiting was required under section 251(c)(2). *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5)*, 17 FCC Rcd. 27039, ¶¶ 117 (Wireline Competition Bureau, 2002).

**Q. WHAT RATE SHOULD AT&T ILLINOIS CHARGE SPRINT FOR TRANSIT SERVICE?**

A. Because neither the 1996 Act nor any FCC regulation implementing the 1996 Act imposes a transit obligation on AT&T Illinois, transit rates are not required to be cost-based, and thus are not subject to the TELRIC-based pricing methodology that applies to interconnection and unbundled network elements that are required by the 1996 Act. This Commission has already concluded that transit service is not subject to TELRIC-based pricing, and it should reaffirm that conclusion here. AT&T Illinois' proposed rate for transit service, which is composed of the same rate elements contained in AT&T Illinois' Commission-approved tariff for transit service, should be incorporated into the ICA.

**Q. WHEN DID THE COMMISSION DETERMINE THAT TRANSIT RATES NEED NOT BE TELRIC-BASED RATES?**

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<sup>2</sup> When a state commission declines to arbitrate an interconnection agreement, the FCC may take the case. 47 U.S.C. § 252(e)(5). In such instances, the FCC typically assigns the case to its Wireline Competition Bureau, which then stands in for the state commission.



A. In the 2004 arbitration between SBC Illinois (now AT&T Illinois) and MCI. In that Docket, 04-0469, the arbitrators addressed whether transit rates should be provided at TELRIC-based rates in Pricing Issue 36:

As Staff noted under NIM 31, neither the 1996 Telecommunications Act nor Section 13-801 explicitly addresses issues related to transit services. In particular, no current rule requires SBC to provide transit services at TELRIC prices. The Commission sees no reason to require SBC to offer transit services at TELRIC prices. We note that SBC currently offers transit services under its state tariff. We agree with SBC that the appropriate rates for transit services should be those in SBC's tariff, not those rates that MCI proposes.<sup>3</sup>

**Q. DOES AT&T ILLINOIS PROPOSE FOR SPRINT'S ICA THE SAME TRANSIT RATE THAT IS IN ITS CURRENT TARIFF?**

A. Yes. AT&T Illinois' rate elements for transiting are in its Tariff No. 22, Part 23, Section 2, 1<sup>st</sup> Revised Sheet 4, as set forth in Schedule JSM-1. The transit rate AT&T Illinois proposes for Sprint's ICA is the sum of the transit rate elements in AT&T Illinois' tariff.

**Q. WHAT RATE DOES AT&T ILLINOIS PROPOSE FOR ITS TRANSIT TRAFFIC SERVICE?**

A. AT&T Illinois is proposing a rate of \$0.005034 per minute of use ("MOU"), which is the sum of the rates contained in AT&T's tariff. Those rates are as follows:

Tandem switching	\$0.004836 per MOU
Tandem Transport	.000189 per MOU
Tandem Transport Facility	.000009 per MOU

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<sup>3</sup> Arbitration Decision, Docket 04-069, pp. 160-161. November 30, 2004.

154 **Q. HAVE THESE RATES BEEN REVIEWED AND APPROVED BY THE ILLINOIS**  
155 **COMMERCE COMMISSION?**

156  
157 **A.** Yes. In its Second Interim Order in Docket 96-0486/96-0560 (Consolidated) (the  
158 “TELRIC Investigation”), dated February 17, 1998, the Commission directed AT&T  
159 Illinois (then Ameritech Illinois) to include transit service language in its compliance  
160 tariff and to provide supporting cost studies.<sup>4</sup> The tariffed transit rates and supporting  
161 cost study filed by AT&T Illinois in accordance with this directive (along with rates and  
162 cost studies for other services and network elements) were subject to Commission review  
163 in Docket 98-0396 (the “TELRIC Compliance Case”). Based on its review of the transit  
164 rates and supporting cost study in that docket, the Commission, in an Order issued on  
165 October 16, 2001, approved those rates with one exception. Specifically, the Commission  
166 directed AT&T Illinois to remove an adjustment it had made as part of the cost study in  
167 the calculation of the Tandem Transport Facility rate.<sup>5</sup> The removal of this adjustment  
168 reduced the Tandem Transport Facility rate to the current rate of \$0.000009. On January  
169 18, 2002, AT&T Illinois revised its tariff to make this change. A copy of the January 18,  
170 2002 transmittal letter and the accompanying tariff sheet containing the approved transit  
171 rates, is Schedule JSM-2. AT&T Illinois has made no additional modifications to its  
172 tariffed transit service rates since then. Accordingly, the currently effective transit  
173 tariffed rates are the same as the ones the Commission approved in Docket 98-0396.

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<sup>4</sup> Second Interim Order, Docket 96-0486/96-0569 (Consol.), *Illinois Commerce Commission, On its Own Motion, Investigation into forward looking cost studies and rates of Ameritech Illinois for interconnection, network elements, transport and termination of traffic* (Feb. 17, 1998), at 107.

<sup>5</sup> Order, Docket 98-0396, *Illinois Commerce Commission, On its Own Motion, Investigation into the compliance of Illinois Bell Telephone Company with the order in Docket 96-0486/96-0569 Consolidated regarding the filing of tariffs and the accompanying cost studies for interconnection, unbundled network elements and local transport and termination and regarding end to end bundling issues* (Oct. 17, 2001), at 52-53.

Those rates are included in Tariff Ill. C. C. No. 22, Part 23, Section 2, 1<sup>st</sup> Revised Sheet  
No. 4, a copy of which is contained in Schedule JSM-1.

**Q. HAS THIS COMMISSION APPROVED THE USE OF THESE TARIFFED  
TRANSIT RATES IN ANY ARBITRATIONS?**

A. Yes. As I previously mentioned, the Commission approved the use of AT&T Illinois' tariffed transit rates in the AT&T Illinois/MCI ICA that was the subject of arbitration in Docket 04-0469. In addition, in a June 14, 2011, Arbitration Decision, the Commission approved for use the same tariffed transit rates in an arbitration between AT&T Illinois and Big River Telephone in Docket 11-0083.

**Q. HOW DO AT&T ILLINOIS' PROPOSED TRANSIT RATES COMPARE WITH  
THE TRANSIT RATES IN SPRINT'S CURRENT ICA?**

A. Actually, the transit rates AT&T Illinois is proposing for the new ICA are slightly lower than the transit rates in Sprint's current ICA. I do not know how the parties arrived at the rates they agreed to for the current ICA, but those rates are slightly higher than AT&T Illinois' tariffed rates.

**Q. WHAT TRANSIT RATE IS SPRINT PROPOSING?**

A. \$.00035 per minute of use, which is less than one tenth of AT&T Illinois' tariffed, Commission-approved rate.

**Q. HOW DOES SPRINT JUSTIFY THAT LOW RATE?**

A. According to Sprint's position statement on the DPL for Issue 43, "Sprint's 6.2.2.4 sets an appropriate Transit rate at \$0.00035 based on AT&T's use of the ISP \$0.0007 rate, recognizing that Transit functions represent less than ½ of the same functions AT&T performs when it charges the \$0.0007 rate."<sup>6</sup>

**Q. IS THAT A SOUND RATIONALE FOR SPRINT'S PROPOSED RATE?**

A. No. Putting aside the fact that the thinking that led the FCC to mandate special rates for terminating ISP-bound traffic has no bearing on what the rate should be for transiting traffic that is not ISP-bound, the fundamental mistake in Sprint's rationale is that it assumes, erroneously, that transit rates must be cost-based. As this Commission has already held, transit rates are not required to be cost-based.

**Q. WHY DO YOU SAY SPRINT'S PROPOSAL ASSUMES THAT TRANSIT RATES MUST BE COST-BASED?**

A. Sprint's comparison of the functions performed to transit traffic with the functions performed to terminate traffic would be meaningful only if there were a requirement that transit rates (like termination rates) must be based on the cost of performing those functions. Again, that simply is not the case.

**Q. IF THE COMMISSION WERE TO REVERSE ITS PREVIOUS DECISION AND DECIDE THAT AT&T ILLINOIS MUST PROVIDE TRANSIT SERVICE AT COST-BASED RATES, COULD THE COMMISSION THEN APPROPRIATELY ADOPT THE RATE SPRINT IS PROPOSING?**

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<sup>6</sup> The DPL to which I refer in this testimony is the version of the DPL that AT&T Illinois filed with its Response to Sprint's Arbitration Petition on October 29, 2012.

226  
227 A. No.

228

229 **Q. WHY NOT?**

230

231 A. Because that rate is not based on AT&T Illinois' costs. Just last year, in fact, when the

232 Commission ordered that the same transit rate that AT&T Illinois is proposing here be

233 included in Big River's ICA in Docket 11-0083, to which I referred above, the

234 Commission rejected the rate proposed by Big River precisely because that rate was not

235 based on AT&T Illinois' costs, while AT&T Illinois' proposed rate was. The

236 Commission concluded:

237 Having reviewed the record, the Commission agrees with Staff and AT&T Illinois  
238 that the transit rates proposed by AT&T Illinois are preferable to those proposed  
239 by Big River. As explained by Dr. Zolnierrek, the AT&T Illinois rates were  
240 developed based upon AT&T Illinois' cost of providing service in Illinois, while  
241 those proposed by Big River were not.<sup>7</sup>

242

243 Again, the rates AT&T Illinois proposed in the Big River arbitration were the same rates

244 AT&T Illinois proposes here, so that conclusion is equally applicable here.

245

246 **Q. DOES SPRINT ADMIT THAT ITS PROPOSED RATE IS NOT BASED ON AN**  
247 **ILLINOIS COST STUDY?**

248

249 A. In effect, yes. Sprint acknowledges that the rate it is proposing is one half the nation-

250 wide rate the FCC established for terminating ISP-bound traffic, and that rate was not

251 based on AT&T Illinois' costs (or on any cost study, for that matter).

252

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<sup>7</sup> Arbitration Decision, Docket No. 11-0083, *Illinois Bell Telephone Company Petition for Arbitration with Big River Telephone Company, LLC*, (June 14, 2011), at 38.

**Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

A. The Commission should reject Sprint's proposal to pay only a small fraction of the rate that every other carrier in the state pays AT&T Illinois for the same service. The Commission should instead adopt as the rate for transit service in Sprint's ICA the Commission-approved rate for transit service that appears in AT&T Illinois' tariff.

**ISSUE 33: What are the appropriate indemnification provisions for charges imposed by the Third Party Terminating Carrier to AT&T Illinois? (Attachment 2, Sections 5.3.3, 5.3.4)**

**Q. WHAT IS THE DISPUTE?**

A. Issue 33 actually encompasses two disagreements, one concerning section 5.3.3. of Attachment 2 and the other concerning section 5.3.4.

**Q. LET'S DISCUSS SECTION 5.3.3 FIRST. PLEASE DESCRIBE THE CIRCUMSTANCES THAT GIVE RISE TO THE DISAGREEMENT THAT IS THE SUBJECT OF THAT PROVISION.**

A. Section 5.3.3 concerns Transit Traffic, *i.e.*, traffic that Sprint originates and hands off to AT&T Illinois to transit to a third party carrier, which then terminates the call to its customer. AT&T Illinois and Sprint agree that this is Sprint's traffic, not AT&T Illinois', and that any termination charges billed by the third party carrier should be billed to Sprint, and not to AT&T Illinois. AT&T Illinois believes that Sprint should have a compensation arrangement with the third party terminating carrier that governs payment of such charges, but AT&T Illinois cannot force Sprint to enter into such contracts. If Sprint chooses not to contract with the third party carrier, however, and if AT&T Illinois winds up being required to pay the termination charges as a result, then Sprint should

indemnify AT&T Illinois for its losses; in other words, Sprint should compensate AT&T Illinois for whatever it has to pay the third party carrier, and for any associated expenses.

**Q. WHY?**

A. Because, as the parties agree, this is Sprint's traffic, and Sprint, not AT&T Illinois, should bear the costs resulting from the third party carrier's termination charges. Also, if Sprint chose not to have a compensation arrangement with the third party carrier, as AT&T Illinois believes it should, Sprint's failure to have such an agreement in place almost certainly caused AT&T Illinois' loss.

**Q. DOES SPRINT DENY THAT IT SHOULD INDEMNIFY AT&T IN THAT SITUATION?**

A. No. In fact, Sprint says the following in its Position Statement on this issue in the DPL:

Sprint is willing to indemnify AT&T for "valid" third-party Section 251(b)(5) charges associated with such traffic that a regulatory agency or court may order AT&T to pay. Absent such an order, AT&T has no liability for such charges unless it voluntarily entered into a legacy contract to pay such charges and, if that is the case, Sprint is not required to indemnify AT&T for charges it voluntarily agrees to pay.

Also, Sprint's proposed language for section 5.3.3, which I quote below, would require Sprint to indemnify AT&T Illinois in the situation I have described.

**Q. WHAT IS AT&T ILLINOIS PROPOSING FOR SECTION 5.3.3?**

A. AT&T Illinois' proposed section 5.3.3 reads:

If (a) Sprint originates Transit Traffic destined for a Third Party Terminating Carrier with which Sprint does not have a traffic compensation arrangement, and (b) the Third Party Terminating Carrier asserts a claim against AT&T ILLINOIS

in a regulatory agency or court for charges for terminating that Transit Traffic;  
and (c) AT&T ILLINOIS does not object to or otherwise resist a Sprint motion to  
intervene or otherwise participate in the regulatory or judicial proceeding; and (d)  
the regulatory agency or court orders AT&T ILLINOIS to pay such Third Party  
Terminating Carrier for the Transit Traffic AT&T ILLINOIS has delivered to the  
Third Party Terminating Carrier, then Sprint will indemnify AT&T ILLINOIS for  
any and all Losses related to such regulatory agency or court order, including, but  
not limited to, Transit Traffic termination charges, interest on such Transit Traffic  
termination charges, and any billing and collection costs that AT&T ILLINOIS  
may incur to collect any of the foregoing charges, interest or costs from Sprint.<sup>8</sup>

**Q. HOW DOES AT&T ILLINOIS' PROPOSED LANGUAGE MATCH UP WITH  
SPRINT'S POSITION STATEMENT ON THE DPL?**

A. Extremely well. Sprint says it "is willing to indemnify AT&T for "valid" third-party  
Section 251(b)(5) charges associated with such traffic that a regulatory agency or court  
may order AT&T to pay." By its terms AT&T Illinois' language only requires  
indemnification if the Third Party Terminating Carrier asserts a claim in a regulatory  
agency or court and "(d) the regulatory agency or court orders AT&T ILLINOIS to pay  
such Third Party Terminating Carrier for the Transit Traffic." By definition, if a  
regulatory agency or court orders AT&T Illinois to pay the termination charges, they are  
"valid" charges, as Sprint would require.

AT&T Illinois' proposed language even goes a step further than Sprint's stated position  
would require by providing that in order to seek indemnification, AT&T Illinois must (c)  
"not object to or otherwise resist a Sprint motion to intervene or otherwise participate in  
the regulatory or judicial proceeding."

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<sup>8</sup> This language differs from the AT&T Illinois-proposed language shown on the DPL. AT&T Illinois informed Sprint of the change in the course of the parties' negotiations since the DPL was filed.



340  
341 **Q. SPRINT ALSO SAYS, “ABSENT SUCH AN ORDER, AT&T HAS NO**  
342 **LIABILITY FOR SUCH CHARGES UNLESS IT VOLUNTARILY ENTERED**  
343 **INTO A LEGACY CONTRACT TO PAY SUCH CHARGES AND, IF THAT IS**  
344 **THE CASE, SPRINT IS NOT REQUIRED TO INDEMNIFY AT&T FOR**  
345 **CHARGES IT VOLUNTARILY AGREES TO PAY.” UNDER AT&T ILLINOIS’**  
346 **PROPOSED LANGUAGE WOULD SPRINT HAVE TO INDEMNIFY AT&T**  
347 **ILLINOIS IF THE THIRD PARTY CARRIER DEMANDED PAYMENT AND**  
348 **AT&T ILLINOIS PAID VOLUNTARILY – AS PART OF A SETTLEMENT, FOR**  
349 **EXAMPLE?**

350  
351 A. No. Sprint would have to indemnify AT&T Illinois only if an agency (presumably, this  
352 Commission) or court ordered AT&T Illinois to pay the third party terminating carrier.

353  
354 **Q. IN LIGHT OF THAT, HAS SPRINT ACCEPTED AT&T’S LANGUAGE?**

355  
356 A. No.

357  
358 **Q. WHY NOT?**

359  
360 A. That is not clear. Sprint’s proposed language, as shown on the DPL, says this:

361 5.3.3 If Sprint originates Transit Traffic destined for a Third Party Terminating  
362 Carrier with whom Sprint does not have a traffic compensation arrangement, and  
363 a regulatory agency or court orders AT&T ILLINOIS to pay such Third Party  
364 Terminating Carrier for the Transit Traffic AT&T ILLINOIS has delivered to the  
365 Third Party Terminating Carrier, then Sprint will indemnify AT&T ILLINOIS for  
366 any *such valid 251(b)(5) termination charges* related to such regulatory agency  
367 or court order. *The Parties will follow the Indemnification Procedures*  
368 *contained in Section 16.2 of the General Terms and Conditions.*

369  
370 Thus, Sprint is agreeing to the core of AT&T Illinois’ proposal, because it agrees that if it  
371 does not have a traffic compensation arrangement with a Third Party Terminating Carrier  
372 to which Sprint sends Transit Traffic through AT&T Illinois, it will indemnify AT&T  
373 Illinois for valid termination charges “related to” a regulatory or court order requiring  
374 AT&T Illinois to pay that carrier’s termination charges. Beyond that, however, Sprint

seems to be saying that the indemnification procedures in section 16.2 of the General Terms and Conditions cover this situation, so that the additional language proposed by AT&T Illinois is not needed.

**Q. DOES AT&T ILLINOIS OBJECT TO THE SENTENCE THAT SPRINT PROPOSES FOR SECTION 5.3.3 THAT SAYS THE PARTIES WILL FOLLOW THE INDEMNIFICATION PROCEDURES IN SECTION 16.2 OF THE GENERAL TERMS AND CONDITIONS?**

A. No. That sentence is shown as disputed on the DPL. However, AT&T Illinois has withdrawn its objection, and agrees that Sprint's proposed sentence can be included in section 5.3.3. Assuming that the Commission approves the language AT&T Illinois is proposing for section 5.3.3, Sprint's additional sentence will appear at the tail end of the provision, immediately after the AT&T Illinois language set forth above on pages 12-13.

**Q. IF SPRINT IS IN FACT OBJECTING TO AT&T ILLINOIS' PROPOSED LANGUAGE BECAUSE IT BELIEVES GT&C SECTION 16.2 COVERS THE SITUATION, HOW DO YOU RESPOND?**

A. The parties' agreement on GT&C section 16.2 does not support Sprint's rejection of AT&T Illinois' proposed section 5.3.3. Section 16.2 is purely procedural; it does not identify circumstances under which a duty to indemnify arises. The parties have indeed agreed to section 16.2, and that provision will govern procedural matters in the event that a party seeks indemnification under section 16.1,<sup>9</sup> and (now that AT&T Illinois has accepted Sprint's proposed sentence for section 5.3.3) it will also govern procedural

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<sup>9</sup> Section 16.1 identifies three sets of circumstances in which a duty to indemnify will arise under the ICA – none of which encompasses the Transit Traffic scenario that is the subject of section 5.3.3.

matters in the event that AT&T Illinois seeks indemnification under section 5.3.3. Since the existence of GT&C section 16.2 in no way mitigates against AT&T Illinois' language for section 5.3.3, I do not know the basis for Sprint's objection to that language. Presumably, Sprint will explain itself in its direct testimony, in which case I will respond in my rebuttal testimony.

**Q. IS THERE ANY SPECIFIC PART OF AT&T ILLINOIS' PROPOSED LANGUAGE WITH WHICH SPRINT SEEMS TO TAKE ISSUE?**

A. Yes. When Sprint is required to indemnify AT&T Illinois, there seems to be a disagreement about exactly what losses the indemnification covers. AT&T Illinois' language provides that "Sprint will indemnify AT&T ILLINOIS for any and all Losses related to such regulatory agency or court order, including, but not limited to, Transit Traffic termination charges, interest on such Transit Traffic termination charges, and any billing and collection costs that AT&T ILLINOIS may incur to collect any of the foregoing charges, interest or costs from Sprint." (Emphasis added.) Sprint's language, in contrast, covers only the termination charges themselves. Thus, Sprint evidently objects to the language I underscored immediately above.

**Q. HOW DO YOU RESPOND TO THAT OBJECTION?**

A. If this Commission or a court orders AT&T Illinois to pay the Third Party Terminating Carrier's charges and Sprint's indemnification duty is triggered, it stands to reason that if Sprint does not immediately make good on that duty and AT&T Illinois has to incur costs to enforce its right to indemnification, Sprint should bear those costs.

As for interest charges, whether Sprint should be responsible for any interest charges that AT&T Illinois is required to pay the Third Party Terminating Carrier depends on the circumstances in the case. At one extreme, if Sprint, after the Third Party Terminating Carrier asserted the claim against AT&T Illinois, urged AT&T Illinois to pay the charges and said it would indemnify AT&T Illinois and AT&T Illinois still refused to pay, it stands to reason that Sprint should not be responsible for interest that accrued after Sprint urged AT&T Illinois to pay. At the other extreme, if Sprint encouraged AT&T Illinois to resist the charges, intervened in the proceeding, and took the position that AT&T Illinois should not be liable, it would stand to reason that Sprint should bear responsibility for any interest AT&T Illinois might be required to pay the Third Party Terminating Carrier. AT&T Illinois would not object to a modification to its proposed language to clarify that Sprint may be (but will not necessarily be) liable for such interest charges.

**Q. DOES THAT CONCLUDE YOUR DISCUSSION OF SECTION 5.3.3 OF ATTACHMENT 2?**

**A.** Yes, and that takes us to Section 5.3.4.

**Q. WHAT IS THE DISPUTED LANGUAGE?**

**A.** Section 5.3.4 begins with language on which the parties have agreed. Following that agreed language, AT&T Illinois proposes additional language, to which Sprint objects. Altogether, the provision reads as follows:

5.3.4 Sprint shall be responsible for sending CPN and other appropriate information, as applicable, for calls delivered to AT&T ILLINOIS' network.

Sprint shall not strip, alter, modify, add, delete, change, or incorrectly assign or re-assign any CPN. If AT&T ILLINOIS identifies improper, incorrect, or fraudulent use of local exchange services, or identifies stripped, altered, modified, added, deleted, changed, and/or incorrectly assigned CPN, then Sprint agrees to cooperate to investigate and take corrective action. If Sprint is sending CPN to AT&T ILLINOIS, but AT&T ILLINOIS is not receiving proper CPN information, then Sprint will work cooperatively with AT&T ILLINOIS to correct the problem. **If AT&T ILLINOIS does not receive CPN from Sprint, then AT&T ILLINOIS cannot forward any CPN to the Third Party Terminating Carrier, and Sprint will indemnify, defend and hold harmless AT&T ILLINOIS from any and all Losses arising from Sprint's failure to include CPN with Transit Traffic that AT&T ILLINOIS delivers to a Third Party Terminating Carrier on behalf of Sprint.**

**Q. WHY IS AT&T ILLINOIS PROPOSED LANGUAGE REASONABLE?**

A. As the agreed language states, when Sprint delivers traffic to AT&T Illinois, Sprint is responsible for sending CPN (calling party number) for that traffic; this requirement applies both to traffic Sprint sends AT&T Illinois for termination to AT&T Illinois' customers (so that AT&T Illinois can properly bill the originating carrier) and to Transit Traffic Sprint sends AT&T Illinois for delivery to a Third Party Terminating Carrier (so that AT&T Illinois can provide that information to the third party carrier to enable that carrier to properly bill the originating carrier). As Sprint would not contest, AT&T Illinois can only deliver CPN relating to Sprint's traffic to a Third Party Terminating Carrier if Sprint delivers the CPN to AT&T Illinois. Accordingly, if Sprint does not provide the CPN to AT&T Illinois, AT&T Illinois' proposed language would require Sprint to indemnify AT&T Illinois against any losses it might suffer to a Third Party Terminating Carrier as a result of Sprint's failure to deliver CPN. This is plainly reasonable.

**Q. HOW COULD AT&T ILLINOIS INCUR A LOSS TO A THIRD PARTY TERMINATING CARRIER IF SPRINT FAILED TO PROVIDE CPN FOR ITS TRANSIT TRAFFIC?**

A. The Third Party Terminating Carrier, unable to tell what carrier's network traffic originated on, might bill AT&T Illinois for the traffic, on the ground that AT&T Illinois delivered the traffic to that carrier and there is no indication that the source of the traffic is any carrier other than AT&T Illinois.

**Q. WHAT IS THE BASIS FOR SPRINT'S OBJECTION TO AT&T ILLINOIS' PROPOSED LANGUAGE?**

A. I have no idea. Sprint does not address section 5.3.4 in its Position Statement on the DPL. If Sprint addresses section 5.3.4 in its direct testimony, I will respond as appropriate in my rebuttal testimony.

**Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 33?**

A. The Commission should adopt AT&T Illinois' proposed language for sections 5.3.3 and 5.4.4 of Attachment 2.

**III. CONCLUSION**

**Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

A. Yes.

**ICC Docket No. 12-0550  
AT&T Illinois Exhibit 4.0  
Scott McPhee Direct Testimony**

**Schedule JSM-1**

**1. GENERAL**

- 1.1 Ameritech End Office Integration Service is available for use in the provision of a telecommunications service as specified to the extent required by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("the Act") and the rules and regulations of the Federal Communications Commission, the IL PUA and the rules and regulations of the Illinois Commerce Commission. The Company intends that this tariff fully complies with the Company's obligations under the Illinois Public Utilities Act as amended effective June 30, 2001 ("Illinois PUA").

The Company has filed this tariff under compulsion of the Illinois Public Utilities Act, including as amended by Illinois Public Act 92-0022, and at the direction of the Illinois Commerce Commission, and specifically reserves any and all rights and remedies it may have relating to possible challenges to Illinois Public Act 92-0022 and this tariff under state and federal law, including federal preemption law. In addition, the Company reserves its right to withdraw this tariff in accordance with any applicable law, including but not limited to the decision of the United States Court of Appeals for the 7th Circuit in *Wisconsin Bell v. Bie*, Nos. 02-3854 and 02-3897 and the decision of the Appellate Court of Illinois in *Illinois Bell v. Illinois Commerce Commission*, Case Nos. 3-02-0738 and 3-02-0920 (Consolidated).

- 1.2 This Section contains a schedule of rates and regulations applicable to the Ameritech End Office Integration Service of AT&T Illinois, hereafter referred to as the "Company". General Regulations as found in Part 2 of this Tariff and Part 2 of Tariff 19 apply to this Section unless otherwise specified in this Section. The term "customer", which appears in Part 2 of the General Regulations, is the equivalent of the term "telecommunication carrier" as used in this Section, which includes "originating carrier" for the purposes of transiting. Unless otherwise indicated herein, the obligations and responsibilities of the telecommunications carrier or party do not apply to the subtending third party carrier with respect to transiting.
- 1.3 Ameritech End Office Integration Service (AEOIS) is a specialized form of interconnection intended for the purpose of integrating the end office and/or tandem switches of Local Exchange Telecommunications Carriers, hereafter referred to as a "carrier", to the Company's public switched network for the completion of local service area calls between and within exchanges without requiring the use of access codes by either carrier. Non-local service area calls must be terminated using alternative interconnection arrangements; e.g., carriers may interconnect with the Company's facilities for cross-connect services under Section 4 of this tariff. Carriers may also connect at any technically feasible point in the network including, at a minimum:

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Issued: August 31, 2010

Effective: October 15, 2010

By W. Karl Wardin, Regional Vice President - Regulatory  
225 West Randolph Street, Chicago, Illinois 60606

ATT TN IW-10-0020



**3. COMPENSATION (cont'd)**

**3.2 Transiting**

The telecommunication carrier agrees to compensate AT&T Illinois for transit calls at the following rates.

- Transiting (Local and IntraLATA Toll):

Tandem Switching	\$0.004836 per MOU
Tandem Transport	0.000189 per MOU
Tandem Transport Facility	0.000009 per MOU

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**ICC Docket No. 12-0550**  
**AT&T Illinois Exhibit 4.0**  
**Scott McPhee Direct Testimony**

**Schedule JSM-2**

January 18, 2002

Advice No. 7631

To: Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, Illinois 62794-9280

The accompanying tariff pages listed on the attachment are issued by Ameritech Illinois and transmitted to you for filing.

Pursuant to the Commission's Order in Docket No. 98-0396, issued October 16, 2001, Ameritech Illinois with this Compliance Tariff Filing makes changes to various Sections of its Unbundled Network Elements (UNE) Tariff, Ill. C.C. No. 20, Part 19, and its Interconnection Services Tariff, Ill. C.C. No. 20, Part 23. These changes comply with the requirements of the TELRIC Compliance Order, including the Commission's directives that 1) Ameritech Illinois replace in its tariff the non-recurring UNE loop and port service order charges and UNE line connection charges proposed by MCI WorldCom for the corresponding charges that now appear in those tariffs and 2) set forth with more specificity the non-recurring charges that apply when various UNEs are ordered by incorporating in each UNE tariff a separate section that sets forth the non-recurring charges and eliminating cross-references to other tariffs.

These UNE offerings are classified as noncompetitive telecommunications service pursuant to the applicable provisions of the Public Utilities Act.

Notice will be published in newspapers of general circulation and copies of the filing are available for public inspection in the Company's public offices in accordance with 83 Illinois Administrative Code.

We respectfully request your Commission to accept these sheets to become effective January 19, 2002.

Any questions and correspondence regarding this filing should be directed to Larry Parker, Director, Regulatory Affairs, who may be reached at:

Ameritech Illinois  
225 West Randolph Street, 27C  
Chicago, Illinois 60606  
Tel. No.: (312) 551-9172  
FAX No.: (312) 727-4771

Please acknowledge receipt by returning the extra copy of this letter.

Sincerely,

(Signed) Larry Parker  
Director – Regulatory Affairs

**Ameritech**  
Tariff

PART 23 - Interconnection Service for Local  
Exchange Telecommunications Carriers  
SECTION 2 - Ameritech End Office Integration  
Service

3rd Revised Sheet No. 3  
Cancels  
2nd Revised Sheet No. 3

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**3. COMPENSATION**

**3.1 Reciprocal Compensation**

Each party agrees to compensate the other for terminated local service area calls<sup>/1/</sup> originated on its network. The following rates apply for local service area calls and intraMSA calls originated on a carrier's network and terminated on the Company's network.<sup>/2/</sup>

End Office Local Termination	\$0.003746 per MOU
Tandem Switching	0.001072 per MOU
Tandem Transport Termination	0.000201 per MOU
Tandem Transport Facility Mileage	0.000013 per MOU per Mile

**3.2 Transiting**

The telecommunication carrier agrees to compensate Ameritech for transit calls at the following rates.

- Transiting (Local and IntraLATA Toll):

Tandem Switching	.004836 per MOU
Tandem Transport	.000189 per MOU
Tandem Transport Facility	.000009 per MOU (R)/3/

/1/ Local service area calls are calls within Usage Bands A and B originating and terminating exchange combinations or Flat Rate Local Calling Areas as specified in Part 4, Section 2 of this tariff.

/2/ Non-local service area calls terminating on the Company's network are subject to Switched Access Service charges as found in Ameritech companies' Tariff F.C.C. No. 2, Section 6.

/3/ Interim rate pursuant to the Order in Ill. C.C. Docket No. 98-0396.

(N)

(D)

(D)

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Issued: January 18, 2002

Effective: January 19, 2002

By Rhonda J. Johnson, Vice President - Regulatory Affairs  
225 West Randolph Street  
Chicago, Illinois 60606